IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR., Plaintiff,)	
V.))	C.A. No. 02-82 ERIE
JAMES D. WASHBURN, et al, Defendants	ý	

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on March 14, 2002, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on November 30, 2005, recommended that the Motions to Dismiss filed by Defendant West End Auto Body, Inc.

[Document # 47] and Defendants Washburn, DiLullo, and City of Erie [Document # 46] be granted, and Plaintiff's Amended Complaint be dismissed in its entirety.

It further recommended that, pursuant to the authority granted to courts in the Prison Litigation Reform Act, the Plaintiff's Amended Complaint be dismissed for failing to state a claim upon which relief can be granted as against Defendants Sanders, John Doe Badge No. 46, John Doe Badge No. 160, Dan Strong, Christopher Strong, Groehl, Bagnoni, and John Doe.

It further recommended that, to the extent Defendants' Motions to Dismiss request dismissal of Plaintiff's original Due Process claim regarding the destruction of his vehicle, Defendants' motions be denied and such claim be allowed to proceed against the original Defendants West End Auto Body, Inc., Washburn, DiLullo, and City of Erie. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at SCI Graterford, where he is incarcerated, and on

Defendants. Objections were filed by Plaintiff on December 14, 2005. After <u>de novo</u> review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 19 day of January, 2006;

IT IS HEREBY ORDERED that the Motions to Dismiss filed by Defendant West End Auto Body, Inc. [Document # 47] and Defendants Washburn, DiLullo, and City of Erie [Document # 46] are GRANTED, and Plaintiff's Amended Complaint is DISMISSED in its entirety.

It is further ORDERED that, pursuant to the authority granted to courts in the Prison Litigation Reform Act, Plaintiff's Amended Complaint is DISMISSED for failing to state a claim upon which relief can be granted as against Defendants Sanders, John Doe Badge No. 46, John Doe Badge No. 160, Dan Strong, Christopher Strong, Groehl, Bagnoni, and John Doe.

It is further ORDERED that, to the extent Defendants' Motions to Dismiss request dismissal of Plaintiff's original Due Process claim regarding the destruction of his vehicle, Defendants' motions are DENIED and such claim shall be allowed to proceed against the original Defendants West End Auto Body, Inc., Washburn, DiLullo, and City of Erie

The report and recommendation of Magistrate Judge Baxter, dated November

The report and recommendation of Magistrate Judge Baxter, dated November 30, 2005, is adopted as the opinion of the court.

MAURICE B. COHILL, JR.
United States District Judge

cc: Susan Paradise Baxter U.S. Magistrate Judge all parties of record